

Trinity, and that was not the ground for disqualification. However, it became the Bureau's new appellate theory. Although the Bureau had previously seen in May's testimony no reason to question his good faith concerning the legal advice he gave Trinity, the Bureau now averred that "upon further review of the evidence" it had discovered additional testimony by May from which it was reasonable to "infer" that May lacked candor. MMB Reply, pp. 4, 15. Moreover, said the Bureau without explanation, that adverse inference outweighs everything else in the record showing that May and Trinity did *not* intend to deceive. Id., p. 14.

This new-found theory is totally untenable. As the Bureau would now have it, May never *believed* his professed interpretation of the minority ownership exception. Therefore, he lacked candor in his conversations with Alan Glasser and Roy Stewart, he was lying in his hearing testimony, and his misconduct is chargeable to Trinity. MMB Reply, pp. 15-16. According to the Bureau (based on a sentence in ID ¶57 citing May's testimony at Tr. 3226), one can reasonably infer that May understood that considerations of actual working control applied to the minority ownership exception. This, says the Bureau, makes "incredible" his testimony that he interpreted the policy, like Commissioner Patrick, without regard to Note 1. Id. As demonstrated below, the Bureau has developed this groundless theory by construing a small fragment of May's testimony badly out of context and thereby concluding that May said something he did not say.

2. May's Testimony and Written Submissions

The testimony on which the Bureau belatedly relies appears at Tr. 3226 (where it has always appeared), squarely in the middle of an 11-page sequence of testimony by May on the same subject beginning at Tr. 3220 and ending at Tr. 3230. In proposed findings, the Bureau cited the testimony at Tr. 3220-25 and 3228-30 as demonstrating that May did *not* deem working control considerations

to be relevant. *See* pp. 60-63 supra. That conclusion was correct. Following is the testimony on which it now seeks to justify its switch of positions:

“Q Okay. Now, did you believe that the use of the word cognizable meant that Paul Crouch or TBN could legally exercise actual working control over NMTV as that term is used in Note 1?

“A No, sir. I ... understood always that the Board of Directors of National Minority had to be the parties that were in fact controlling and operating National Minority, and they did that by coming to meetings, participating in the discussions at meetings, voting at meetings, and generally directing the policies and affairs of the company....

“And when I looked at the word 'cognizable,' I understood this word to mean that the group owner could do things that otherwise may not be permissible between two broadcast licensees because it was designed to allow the policy to succeed. And without this connection where you could permit majority multiple-owner broadcasters from assisting and helping minority entities, it wasn't going to succeed, and that's what I understood.” Tr. 3226-27.

In the first part of the quoted answer, May said that he understood actual working control for NMTV to mean a Board of Directors that functioned through participation at Board meetings. That is exactly the same as his testimony at Tr. 3220 and Tr. 3377 (working control for NMTV means a functioning Board of Directors) on which the Bureau originally relied to find that May and Trinity did *not* lack candor. *See* pp. 61, 63 supra. In the second part of the quoted answer, May very plainly stated that he understood that the provision allowing group owners to hold cognizable interests under the minority ownership exception permitted Trinity and Crouch to assist minorities with management and financing through a relationship “*that otherwise may not be permissible*.” That is exactly the same as his testimony at Tr. 3223-24, Tr. 3225, and Tr. 3229 (the minority ownership exception was an exception to the *de facto* control policy) on which the Bureau likewise initially relied. *See* pp. 62-63 supra. Immediately after the answer quoted above, the cross-examiner sought clarification,

whereupon May *repeated* what he had just said, to wit: that he understood that *de facto* control compliance for NMTV meant a functioning Board of Directors, and that he did not consider the usual considerations of working control when advising Trinity "because I thought *there was effectively an exception.*" Tr. 3228-29 (emphasis added). The Bureau initially found that this testimony too *supports* Trinity's renewal. See pp. 60-63 *supra*.

In short, the Bureau has turned up absolutely nothing new in its "further review" of the evidence. Instead, it has drawn an unfounded inference from two words -- "No, sir" -- by disregarding both May's immediately ensuing explanation and the context provided by the whole sequence of testimony on the subject. In fact, May's testimony in the sequence from Tr. 3220 to Tr. 3230 is precisely what the Bureau had originally (and correctly) said shows that May and Trinity did *not* intend to deceive.

Not only does the Bureau now seem to disregard the testimony on which it previously relied, it ignores *other* testimony in the record that supports the Bureau's original position and refutes its new theory. What follows is more testimony by May that is entirely consistent with the Bureau's original finding that he did not consider *de facto* control to be relevant when he advised Trinity:

"It's also that in the context of the relationship between these two entities, it was in regard to a specific Commission policy, and the policy permitted these cognizable interests to occur between these two companies. And among those were that Dr. Crouch was president of both companies *and many functions and things that might not otherwise be in the normal communications experience in this case seemed appropriate*, especially in light of the fact that I certainly understood and advised my client that the purpose of the policy was to foster and create [an] environment in which group owners would assist and help minority organizations get into broadcasting, to help by providing them with funding and programming and management experience and to essentially do what was required to make sure they could succeed. And that is all part of that process." Tr. 3168-69 (emphasis added).

* * *

"I mean, this was a policy designed to create an exception for a group owner to work with and assist a minority company, and in that sense it just didn't occur to me that the issue of a *de facto* control later down the road was going to somehow jump out and say: you're not supposed to do this and you're not supposed to do that, for example, provide accounting services or have an affiliation agreement or anything along those lines. And, so ... I thought that in this context, and it was the first time, to my knowledge, this has ever been done, that we were ... providing the material and we were in fact complying and fulfilling the very policy that the Commission was inviting people to do at the time by saying: we recognize the multiple ownership rules are not per se the best place to provide for minority enhancement, but ... we also recognize there are limitations in their ability to be able to get financing and to develop the expertise, and so we would permit that a group owner could have this cognizable interest and do these things." Tr. 3204.

* * *

"What I'm providing you with is what I advised these people about. And what I advised these people about is this [is] a brand-new policy. The Commission is encouraging group owners to get involved with minority organizations. I felt that this ... National Minority was such an organization, that Trinity could become involved, and *I did not see that involvement as being precluded or specifically limited in any area* based upon what the Commission was trying to do." Tr. 3205 (emphasis added).

* * *

"I didn't think *de facto* control was an issue. In fact, I thought the policy was essentially inviting group owners to do just what these folks did." Tr. 3206.

* * *

"Well, I never thought of it in those contexts, the *de facto* ... I read this policy and believed that the invitation was to permit the relationship [that] would then evolve, that's the [advice] I gave. Whether or not it was right or wrong or whether or not it was well-founded, it was the [advice] I gave, people acted on it and that's why we're here today and literally millions of dollars and hundreds of peoples lives have been impacted as a result of what I did." Tr. 3394.

* * *

"I never considered that *de facto* control in this context would be a problem, I frankly thought that under the rules the way I understood them and the [advice] that I gave was that they could do these things." Tr. 3396.

Likewise affirming the testimony originally cited by the Bureau is May's testimony elsewhere in the record that (a) he believed a functioning Board of Directors constituted minority ownership and

working control for NMTV (*see, e. g.*, Tr. 3277, 3278, 3279, 3366-67, 3369-70, 3371, 3399), and (b) he understood that a cognizable interest holder has authority to provide a licensee's programming, management, and financing (*see, e.g.*, Tr. 3386, 3398). On the latter point, the Bureau now brands May's testimony dishonest without ever addressing the key concept of cognizable interests or showing why May's understanding of that concept was not held in good faith.

The Bureau also argues for the first time that May's testimony contradicted what he had argued in a pleading concerning NMTV's Wilmington application. MMB Reply, p. 15. That, too, is demonstrably not so. May's testimony is completely consistent with the referenced pleading and with his other submissions to the Commission. In the referenced pleading, May wrote:

"[S]ince NMTV is a nonprofit organization, '*control*' is *determined by reference to its board of directors*. Accordingly the requirement of rule 73.3555(d)(3)(iii), which defines 'minority control' as fifty (50) percent owned by one or more members of a minority group, has been met. The rule does not require anything more. Neither the rule nor the Commission's various policy statements explaining or defining the rule require or even suggest that the minority-controlled company or organization provide any specific kind of programming *or that the controlling minorities be involved in the management of the station* (which was the issue in KIST and its progeny). There is no explicit rule or implicit suggestion that the controlling minority group members are prohibited from working with companies or other organizations which are not minority controlled. Finally, the structure of the rule and the Commission's explanations of the rule show that the Commission contemplated -- in fact, expected -- that the minority-controlled corporation would have financial and other relations with a nonminority-controlled group owner." MMB Ex. 353, pp. 14-15 (emphasis added).

That is totally consistent with May's hearing testimony. *See* pp. 61, 63, 68-70 supra. Moreover, May went on in the pleading to show that (a) the standard incorporated in the minority ownership exception (greater than 50% "ownership") is the "same standard for minority control in order to obtain a preference in LPTV/Television translator lotteries," (b) that standard was Congressionally "mandated by 47 U.S.C. § 309(i) (3) (A)," and (c) NMTV met that standard through minority

Directors functioning at Board meetings. MMB Ex. 353, pp. 16-17. He said precisely the same things in his testimony at the hearing. Tr. 3368-70 (definition of control in minority ownership exception is the same as in the minority LPTV lottery preference); see pp. 61, 63, 68, 71 supra.

May maintained the same position in his next filing, a response to a Commission inquiry, where he said:

"NMTV also notes here that it provides the requested information without prejudice to its position, set forth in its 'Opposition to Petition to Deny' filed herein, that *any information ... concerning the day-to-day operational management of NMTV, and the participation of NMTV's minority directors in that day-to-day operation, is legally irrelevant to the determination which the exception specified in 73.3555(d)(1)(i) requires -- i.e., whether Rev. Aguilar and Mrs. Duff own a majority of NMTV, however that is defined. The Commission has for decades defined the owners of a nonprofit/nonstock corporation as its directors (See, e.g., Roanoke Christian Broadcasting, Inc., 52 Rad. Reg. 2d (P&F) 1725, (Rev. Bd. 1983), rev. den., FCC 83-441 (1983).*

"Neither the Commission's Order which adopted 73.3555, Memorandum Opinion and Order in Gen. Docket No. 83-1009 (on Reconsideration), 100 F.C.C.2d 74, 54 Rad. Reg. 2d (P&F) 966 (1985), the text of the rule itself, see, e.g., 73.3555(d)(3)(iii), or the notes which accompany the rule, mentioned that the rules' purpose or its applicability *was in any way affected by the participation of the minority owners in the day to day management of the station (or stations)*. See, for example, 57 Rad. Reg. 2d (P&F) at 982. Moreover, both the rule and the Order specifically define 'minority control' to be ownership. In the context of a nonprofit corporation, ownership equals 'directorship.' Pursuant to the standard set forth in 73.3555(d)(3)(iii), nothing more is required." TBF Ex. 121, pp. 1-2 (emphasis added).

In May's next pleading, a request for declaratory ruling, he reiterated: that the minority principals' "responsibility for day-to-day station operation" is irrelevant; that no "showing of minority principal involvement in station management ... is required;" that the minority ownership exception applies to the composition of a nonprofit/nonstock corporation's Board "without resorting to consideration of other factors such as whether the minority directors are involved in day-to-day

station operation;" that based on the authorization for group owners to hold cognizable interests as the incentive to provide assistance, "[t]here was no limit or restriction placed on the level of that assistance;" and that this "was the same standard for minority-control in order to obtain a preference in LPTV/television translator lotteries," a standard which was "mandated by statute, 47 U.S.C § 309 (i) (3) (A)." TBF Ex. 120, pp. 35, 36, 39, 55-57, 59-60 and n. 9. All of that is entirely consistent with his hearing testimony. See pp. 61-63, 68-70 *supra*.

May again stated these positions in his next pleading, an opposition to Glendale's petition to deny Trinity's instant application, which attached and incorporated the request for declaratory ruling. TBF Ex. 120, pp. 11, 29-75. Referring to the declaratory ruling request, May said:

"The gravamen of that request is that NMTV, a nonprofit charity, is, for FCC purposes, 'owned' by its directors ... a majority of whom are minorities, and when the Commission implemented the minority exception to the Rule of 12 it defined 'minority control' as 'minority ownership.' Nothing more was required. This is a literal interpretation of the Rule, and on its face is not inconsistent with sound policy. The Commission, it appeared, had determined that, for purposes of the 12-station exception, it would focus on *equity participation* by minorities and not hinder or preclude group owners from providing significant expertise in the management of the minority owned property." *Id.* p. 19 (emphasis added) (footnote omitted).³⁰

Since the Commission had determined and explicitly *said* it would focus on "equity" participation by minorities for purposes of the minority ownership exception (Minority Incentive Reexamination; see pp. 10-12, 39 *supra*), and since that standard *had* derived from the beneficial ownership standard of the minority LPTV lottery preference, the position stated in the pleading by May was not only reasonable and presented in good faith, it was *right*.

³⁰ The footnote specifically referred to the beneficial ownership standard that applied to the minority LPTV lottery preference.

Furthermore, in a letter dated May 15, 1992, to Larry A. Miller of the Bureau's Enforcement

Division (Tab 14), May re-emphasized this position as follows:

"NMTV reiterates here its position, as set forth in its September 24, 1991 response to the Commission in the Wilmington proceeding (BALCT-910329AE), and November 18, 1991 Request for Declaratory Ruling, that the minority ownership exception to the multiple ownership rule (Rule 73.3555(d)) requires only legal ownership, without reference to an entity's day-to-day management policies or practices.

* * *

"When [section 309(i)(3)(A)] was adopted, Congress directed the Commission to establish rules for a system of random selection by February 9, 1982. The Commission initially declined to adopt rules governing the lottery system because it found the statute to be ambiguous and unworkable. Congress thereafter provided detailed instructions as to what it intended to accomplish with its new provision in section 309(i)(3)(A), and thus issued, on August 19, 1982, its Conference Report No. 97-765, see Rad. Reg. (P&F) Current Service, paragraphs 10:1244 and 10:1258. After an extensive discussion of the media ownership and minority ownership preferences Congress instructed as follows:

'With respect to both media ownership and minority ownership preferences, the Conferees expect that the Commission shall evaluate ownership in terms of the beneficial owners of the corporation, or the partners, in the case of a partnership. Similarly, trusts will be evaluated in terms of the identity of the beneficiary.'

"This clear direction from Congress ordered that the Commission only look to the 'beneficial' owners of a corporation, or the actual beneficiaries of a trust. Congress was only concerned with the equity owners or beneficiaries, not with the identity of those actually operating or controlling the corporation or trust.

* * *

"The Commission obeyed this clear statement of Congressional intent when it modified FCC Form 346 to specifically provide that the minority preference was available to nonstock corporations when 'a majority of the members are minorities, the entity is entitled to a minority preference.' See, FCC Form 346, section V, Minority Preference, Instruction 3.c.

"Moreover, the specific narrowing by the Commission of the definition of 'minority-controlled' to be 'minority-ownership' in rule 73.3555(d) is entirely consistent with Congressional intent. Indeed, this was the precise standard the Commission specified

in its own reports and orders developed in General Docket No. 83-1009 relating to the relaxation of the multiple-ownership rules -- specifically, Report and Order in Multiple Ownership - Seven Stations Rule, 100 F.C.C 2d 17, 56 Rad. Reg. 2d (P&F) 859 (1984), and Reconsideration of Multiple-Ownership - Seven Station Rule, 100 F.C.C 2d 74, 57 Rad. Reg. (P&F) 966 (1985)." (Emphasis in original.)

In short, May was perfectly consistent in his statements to the Commission throughout this proceeding, including during four days of hostile cross-examination at the hearing. His unwavering consistency demonstrates beyond question that he *did* believe the position he was stating and that he was candid in his testimony. To conclude that his testimony contradicted his earlier pleadings is to badly misread both.

Equally untenable is the Bureau's argument that May did not believe his interpretation of the minority ownership exception because the law was already so settled that his interpretation was "incredible." May's interpretation of the ownership exception was the same interpretation he had given to the minority LPTV lottery preference, which the Bureau agrees not only was credible but was correct. *See* pp. 27-29 supra. His interpretation of the minority ownership exception was shared by Chairman Fowler, by Commissioner Patrick, by the full Commission at the December 1984 meeting and in Minority Incentive Reexamination, and by The Washington Post Company and Covington & Burling. Moreover, his interpretation was fully consistent with the meaning of "cognizable" interest -- the concept that lies at the heart of the minority ownership exception.

Besides reading two words out of context from the testimony and thereby concluding that May said something he clearly did not say, the Bureau ignores countervailing evidence that refutes any notion that May was being dishonest. For example, the Bureau previously found that the many disclosures about Trinity's relationship with NMTV are incompatible with an intent to deceive. *See* pp. 68-69 supra. In assessing the "weight" of the evidence as the Bureau now claims to do (MMB

Reply, p.14), evidence that negates an inference of deceit must also be weighed. The Commission filings made by May are still in the record, and they still refute any intent to deceive. That documentary evidence is far more probative of May's state of mind than a groundless "inference" drawn from a manifest misreading of his testimony.

It would be unconscionable if the Commission accepted the Bureau's new-found theory, disqualified Trinity, and destroyed the professional career of Trinity's counsel based on an inference drawn from a snippet of testimony taken wholly out of context from the record -- especially since the Bureau first made the argument in an appellate reply brief. New arguments made in reply exceptions are improper and may not be considered. KEPW Broadcasting Co., 44 FCC 2d 310, 314 (1973), *stay denied*, 47 FCC 2d 248 (1974); 47 CFR §1.277(a). New arguments devoid of merit deserve no attention at all.

D. The ALJ's Rulings and Decision Were Tainted by the Erroneous HDO

The ALJ's conduct of the proceeding was clearly tainted by the erroneous declarations in the HDO that working control determined eligibility for the two minority preferences at issue. In fact, at the outset of the evidentiary admission session, the ALJ first thought that *de facto* control was the only issue in the case. Tr. 468-69 ("I don't see how the witness' belief ... is relevant.... It's what took place and how they function that's relevant....Her belief is irrelevant if in fact it wasn't a minority-controlled company.") Even after being shown why state of mind was relevant (Tr. 469-70), the ALJ remained fixated on the question of control and downplayed the critical issue of intent. The result was a series of astonishingly prejudicial rulings.

The ALJ excluded from evidence NMTV's comprehensive showing that its minority Directors fulfilled their intent to serve the minority community through recruitment, hiring, training, and

—
—
— promotion of minority employees; programming oriented to minority needs and interests; and direct
— community outreach. According to the ALJ, such matters showing good faith intent had “no bearing
— on whether or not it's minority controlled or not.... And that's the issue, whether it was de facto
— controlled.” Tr. 476-79. *See also* Tr. 479-80, 491-93 (ALJ deems evidence irrelevant unless it
— relates to control issue, stating “[w]e have a simple case of control here”); Tr. 837-57, 860-71 (ALJ
— rules that each paragraph of written testimony, to be relevant, must itself refer “in some way to the
— control issue”). The ALJ similarly excluded testimony as to Jane Duff's state of mind regarding
— aspects of NMTV's relationship with Trinity that were specifically questioned in the HDO or
— otherwise relevant. *See, e.g.*, Tr. 519-22 (ALJ excludes evidence of Duff's intent because “I don't
— see how disclosure of that nature has any bearing at all on whether or not there was de facto
— control”); 523-26 (same); Tr. 554 (ALJ rejects testimony because “this is a control issue ... If it's not
— relevant to the question of control, it's irrelevant as far as I'm concerned”); Tr. 563-64 (same); Tr.
— 622-23 (Duff's state of mind about NMTV's legality excluded as “irrelevant” to “whether control
— existed”); Tr. 653-57. And concerning Paul Crouch's intent the ALJ summarily ruled, “I'm not going
— to get into his beliefs. That's irrelevant.” Tr. 758. Reflecting the absolute influence of the HDO's
— erroneous focus on *de facto* control, he dismissed relevant legal authority that Trinity cited to him,
— stating, “I'm going to determine the case *as the Commission indicates in their designation [order]*
— on the basis of *control* decisions.” Tr. 842 (emphasis added).

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— Two conclusions in the ID reflect how fundamentally the errors in the HDO infected the ALJ's
— decision. In proposed findings, both the Bureau and Trinity pointed the ALJ to the discussion in the
— Second Lottery Order, 93 FCC 2d at 976-77, where the Commission adopted the beneficial
— ownership standard for the minority LPTV lottery preference. *See MMB F&C* ¶¶33, 304; Trinity

F&C ¶¶684-87; *see* p. 27 *supra*. It is impossible to make an informed decision on the relevance of *de facto* control without considering the cited discussion. Moreover, as the Bureau recognized, it is impossible to consider the cited discussion without perceiving that working control was *not* relevant because *passive* ownership interests qualified for the minority preference. *See* pp. 27-29 *supra*. Yet the ALJ completely disregarded the import of the cited discussion, ignored Trinity's position altogether, and dismissed the Bureau's position in a footnote which (a) cited a different part of the Second Lottery Order that did *not* address the meaning of "minority-controlled," and (b) relied on *de facto* control cases that did *not* involve the minority LPTV lottery preference at all. *ID* n. 43. While the ALJ's ruling is demonstrably indefensible -- holding that *de facto* control applied when it did not -- the ruling plainly illustrates that (as he said he would) the ALJ did "determine the case as the Commission indicates in their designation [order]." The tainted HDO produced a tainted *ID*.

Similarly tainted was the ALJ's remarkable conclusion that "any interpretation of §73.3555 which omits consideration of actual working control is unreasonable on its face." *ID* ¶328. The ALJ was able to make that rash assertion because: (a) the HDO failed to address the development of the beneficial ownership definition of "minority-controlled" for the minority LPTV lottery preference and then the minority ownership exception, and (b) the ALJ ignored Commissioner Patrick's statement that the minority ownership exception *did* omit consideration of actual working control. May's interpretation of the minority ownership exception cannot possibly be found "unreasonable on its face" given that his interpretation was based on the precedent of the minority LPTV lottery preference, the rule literally said exactly what he construed it to say (*see* pp. 47-50 *supra*), and Commissioner Patrick had stated the same interpretation (which Chairman Fowler expressly agreed with and the Commission later affirmed in Minority Incentive Reexamination). Thus, if anything is

unreasonable on its face, it is not May's interpretation of "minority-controlled," but the ALJ's own conclusion on the point.

Locked in as he was to the HDO's mistaken premise that *de facto* control was decisive under both minority policies at issue, the ALJ doggedly pursued the question of control and, deciding that Trinity controlled NMTV, adjudged Trinity guilty of intentional deceit although there was no evidence of such intent. His theory of intent amounts essentially to the proposition that Paul Crouch (a layman) understood the minority ownership exception better than his FCC counsel did, better than Chairman Fowler did, better than Commissioner Patrick did, better than The Washington Post Company and Covington & Burling did, and better than the Bureau did when it processed the Odessa application. That supposition is patently farfetched and completely misreads the evidence. See Trinity Exceptions, pp. 18-22. But it reflects again how the tainted HDO produced a tainted ID.

In short, because the HDO erroneously focused on *de facto* control as being relevant to the minority ownership policies involved, the ALJ's evidentiary rulings and ultimate decision were fatally flawed and Trinity was denied a full and fair hearing. Due process cannot be restored simply by declaring that all errors will be disregarded. Once the HDO launched this proceeding on an ill-considered pursuit of *de facto* control, the case became irreparably tainted and Trinity's guilt was all but assumed. The case against Trinity is irreparably tainted and must be terminated by vacating the Trinity qualification issues now.

V. TRINITY'S APPLICATION SHOULD BE IMMEDIATELY GRANTED

In light of the foregoing, Trinity's license renewal application for WHFT(TV) should immediately be granted. The Trinity qualifying issues were improvidently designated. Those issues should be vacated or Trinity should otherwise be declared exonerated (*see* pp. 17-18 supra), leaving

Trinity fully qualified for renewal. Furthermore, assuming *arguendo* that the HDO could properly revise the Congressionally-mandated beneficial ownership standard on which the minority LPTV lottery preference was founded, Trinity, as the Bureau has recognized, "did not have actual notice" of such revision and "TBN and Crouch could not have had and did not have the intent necessary to abuse the Commission's processes." MMB Reply, pp. 2-3 (§4); p. 29 *supra*. Likewise, assuming *arguendo* that the HDO had properly addressed and restated the minority ownership exception, Trinity "did not have actual notice" of such restatement and "could not have had and did not have the intent necessary to abuse the Commission's processes." Indeed, either the minority ownership exception meant what Colby May, Commissioner Patrick, Chairman Fowler, the full Commission in Minority Incentive Reexamination, Covington & Burling, the Washington Post Company, and the language of the rule itself said it meant, or it was extraordinarily ambiguous and unclear. Since Trinity had no intent to abuse the Commission's processes, for that reason also it remains fully qualified for renewal.

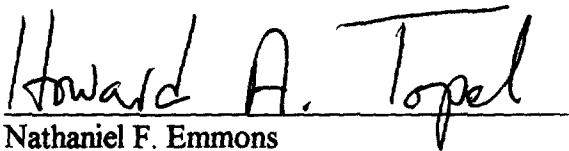
Glendale, on the other hand, must be disqualified for repeated misrepresentations and lack of candor on the part of its controlling principal, George Gardner, in LPTV applications filed while he was already formally under heightened Commission scrutiny for lack of candor in another proceeding. *See* Trinity Exceptions, pp. 32-40; MMB Exceptions, pp. 2-17. And even if Glendale were not disqualified for that misconduct, WHFT's outstanding record of public service programming and response to community needs merits a dispositive renewal expectancy *regardless* of Glendale's qualifications. Since Trinity is qualified and Glendale is not, and since Trinity's renewal expectancy makes Trinity comparatively superior to Glendale in any event, the proceeding is ripe for the grant of Trinity's application.

Accordingly, Trinity respectfully moves for an order (a) setting aside the improvident designation of the Trinity qualification issues; (b) expunging the record on those issues, including (i) the evidence adduced at hearing on those issues, and (ii) all pleadings and other filings (or portions thereof) made in regard to those issues; and (c) vacating the findings of fact and conclusions of law on those issues in the Initial Decision. Having taken these actions, the Commission, as requested in Trinity's Exceptions to the Initial Decision, should proceed to (a) resolve the pending Glendale qualifications issue adversely and disqualify Glendale for repeated misrepresentations and lack of candor; (b) hold that, even if Glendale were qualified, Trinity merits a dispositive renewal expectancy under the comparative issue; and (c) grant Trinity's application.

Respectfully submitted,

TRINITY BROADCASTING OF FLORIDA, INC.

TRINITY BROADCASTING NETWORK

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August 20, 1996

DECLARATION OF ALAN E. GLASSER

1. My name is Alan E. Glasser, and I reside at 2822 Plaza Verde, Santa Fe, New Mexico 87505-6512. From February of 1969 until early June of 1994, I was employed as an attorney for the Federal Communications Commission (F.C.C.) in Washington, D.C.

2. In 1987, I was an attorney supervisor in the Television Branch of the Video Services Division of the Mass Media Bureau. My office was located in Room 700 at 1919 M Street, N.W., Washington, D.C. 20554. I recall reviewing an application filed by National Minority T.V., Inc. (NMTV) for authority to acquire a television construction permit to build a station in Odessa, Texas. That application requested that it be processed and considered pursuant to the F.C.C.'s minority ownership rule and policy. The rule and policy allowed multiple licensees to hold an interest in two additional stations. Normally, the limit on ownership by multiple licensees was 12, but an additional two was permitted if those stations were controlled by recognized minorities. NMTV was a nonstock, nonprofit corporation. It had three directors, I recall, two of whom were recognized minorities. I had discussions with Colby May, the attorney representing NMTV, concerning the application.

3. I understand that a hearing was designated at the F.C.C. in April 1993, and was held between November 1993 and May 1994, the issue of which involved whether NMTV lacked candor in the Odessa application. The actual designation involved Trinity Broadcasting of Florida, Inc. and its renewal application for WHFT(TV), Miami, Florida, and involved questions regarding NMTV's proposed acquisition of WTGI(TV), Wilmington, Delaware, where similar issues were raised. The Delaware application was voluntarily dismissed by the applicants prior to the designation of the Florida renewal application. The principals of NMTV and Trinity Broadcasting of Florida, Inc. are very similar. Trinity Broadcasting Network controlled WHFT's licensee, and its principals were similar to those of NMTV. I was employed continuously by the F.C.C. at the office and located as set forth above from the time NMTV's Odessa application was filed until my retirement in June of 1994; this period of time included the noted hearing. No F.C.C. attorney or other F.C.C. employee contacted me in connection with that hearing to ask me about my review of the Odessa application or any of my discussions with Colby May about that application.

4. If I had been asked, I would have stated that I believed then and believe now that Colby May was forthright in his submission of information involving NMTV because, during our many discussions, I was very concerned about the relationships noted above. He was responsive and supplied all information that I had

requested. I went to my superior, Roy Stewart, Chief of the Video Services Division, to express my concerns and to ask if further information was necessary to show compliance with the Commission's minority ownership policy. I was told to obtain NMTV's By Laws and if they were in compliance with the state where executed that would be sufficient. That information was provided by Colby May. So I can say truly that he was responsive. In any event, we did not go behind the By Laws and/or request any further information or explanation. The application as approved by my superiors, not me. I had no authority to approve applications other than short-form applications. Those applications did not involve complete change of ownership of a particular station or stations.

Executed under penalty of perjury in Santa Fe, New Mexico, this 9th day of April, 1996.



Alan E. Glasser

TAB 2

Tab 2 is a VHS videotape supplied in the plastic envelope separately appended to the original and the service copies of this pleading, but not submitted with the non-original copies of the pleading filed with the Commission. Additional copies will be provided to the Commission request.

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FCC OPEN MEETING

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Multiple Ownership Item

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December 19, 1984

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P R O C E E D I N G S

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2 Chairman Fowler: Our Mass Media Agenda. We'll
3 say good morning to Mr. McKinney. Good morning, sir.

4 Mr. McKinney: Good morning, Mr. Chairman.

5 Chairman Fowler: And first up is amendment of
6 Section 73.3555 of the Commission's rules relating to
7 multiple ownership of AM/FM and television broadcast
8 stations, and we would like to have a presentation on
9 this, sir.

10 Mr. McKinney: Mr. Chairman, David Donovan will
11 present the item.

12 Chairman Fowler: All right. Good morning, sir.

13 David Donovan: Good morning, Mr. Chairman.

14 Chairman Fowler: Welcome. Now the second one,
15 I like. Please go ahead.

16 David Donovan: On September 22, 1983 the
17 Commission adopted the Notice of Proposed Rulemaking in
18 General Docket 83-1009 for the purpose of re-examining the
19 seven station rule. According to this rule, no single
20 entity could have a cognizable ownership interest in more
21 than seven AM, seven FM and seven television stations, no
22 more than five of which could be VHF stations.

23 After reviewing an extensive record, the
24 Commission on July 26, 1984 adopted a Report and Order
25 which concluded that the seven station rule should be

1 eliminated. Nevertheless, the Commission expressed
2 concern that if the rule was repealed immediately, and in
3 its entirety, a significant restructuring of the broadcast
4 industry might occur. Accordingly, the Commission adopted
5 a transitional multiple ownership limit in which no single
6 entity could have a cognizable ownership interest in more
7 than twelve AM, twelve FM and twelve television stations.
8 These interim limitations were to terminate in six years,
9 unless experience showed that continued Commission
10 involvement was warranted.

11 Now before the Commission are eight duly filed
12 petitions requesting reconsideration of the Commission's
13 decision in the Report and Order. For the most part,
14 these petitioners seek reconsideration of the Commission's
15 decision as it relates to television. After a careful re-
16 examination of the record in this proceeding, the Bureau
17 finds that the Commission's previous decision was
18 fundamentally correct. We continue to believe that repeal
19 of the seven station rule would not adversely affect the
20 Commission's traditional policy objectives of promoting
21 viewpoint diversity and preventing economic concentration.

22 No new evidence has been presented by either the
23 petitioners or responding parties which would cause us to
24 alter the basic conclusions of the Commission's previous
25 decisions.

On reconsideration, however, we believe that the initial decision did not place sufficient emphasis on the potentially disruptive effects that may accompany a substantial relaxation of the seven station rule. In this regard, we note that the seven station rule has been an integral part of our regulatory scheme affecting basic economic decisions in the broadcast industry. As a result, the Bureau now believes that the Commission should proceed more cautiously with this aspect of deregulation.

Balancing these various policy considerations, and keeping in mind the need for administrative simplicity in our rules, we believe that a single broadcast entity should be allowed to have a cognizable ownership interest in no greater than twelve commercial television stations, twelve AM stations and twelve FM stations.

With respect to commercial television, a single entity shall be allowed to have a cognizable ownership interest with stations reaching a maximum of 25% of the national audience as determined by Arbitron ADI market rankings of the percentage of national households contained in each market.

In order to take into account the physical reach limitation of UHF stations, owners of UHF stations will be attributed with 50% of a market's ADI audience reach. Consistent with our objectives to promote minority